

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

accompanied by an affidavit of a person with knowledge as to the facts set forth in the petition. 47 C.F.R. § 1.223(b).

Intervention under § 1.223(b) is entirely discretionary, as distinguished from a § 1.223(a) intervention as of right.^{2/}

2. KWIX devotes an inordinately large segment of its petition to establish its status as a competitor. That issue is not contested by Contemporary/Lake in these proceedings. Left largely unaddressed by KWIX, however, in both the petition and the attached affidavit is the more critical question of precisely how KWIX "will assist the Commission in the determination of the issues in question." 47 C.F.R. § 1.223(b). KWIX's contention is that it has "additional information concerning the participation by Mr. Rice in the day-to-day operations of the station," which somehow qualifies it as an additional party. KWIX's argument is misguided.

3. KWIX asserts in its petition that it has already "participated in the proceeding which resulted in the issuance of this revocation order" by providing the Commission certain information in its informal filings. This previous participation does not confer any special standing upon KWIX to intervene. Moreover, nothing prohibits KWIX from providing further information, if any, to the Mass Media Bureau (the "Bureau") which is charged with the responsibility of representing the public interest in this revocation proceeding. The Bureau would

^{2/} Intervention as of right pursuant to § 1.223(a) is inapplicable to revocation proceedings such as this. See Victor Muscat, 31 FCC 2d 620 (1971).

then have the opportunity to screen KWIX's purported additional information to determine whether it is relevant and credible and to determine how to utilize any such information appropriately. Allowing KWIX, a self-interested competitor, to participate separately will unduly complicate the proceeding, in contravention of the public interest, by introducing a third perspective that is neither needed by the Bureau nor necessary to the determination to be made by the Commission. At best, KWIX's involvement is redundant of the Bureau's efforts and, therefore, wholly unnecessary.

4. To the extent that KWIX asserts it has additional information, KWIX itself admits to the irrelevance of the facts it purports to possess. KWIX states in support of its request to intervene that its prior participation was valuable because it "provided information showing that Michael Rice had failed to fulfill a pledge made to the FCC that he would recuse himself from participation in the day-to-day management of the stations" (Emphasis added.) Petition, p.3, ¶ 4. The "additional" information KWIX now purports to possess (but curiously fails to disclose) concerns Mr. Rice's alleged participation "in the day-to-day operation of the stations" following his incarceration. (Emphasis added.) Id. at ¶ 5. Consequently, the so-called "additional" information concerns only operational activities and not managerial and decision-making participation, which is the focus of the Commission's concerns in Issues 2 and 3 of the Order to Show Cause.

5. Most importantly, KWIX has provided no explanation as to why it must be made a party before it will disclose the evidence it purports to possess, nor has it provided any reason for not having already volunteered the information to the Commission, the Bureau or Contemporary/Lake. The public interest will best be served by simple disclosure of the purported facts without the addition of another party to this proceeding. See Christian FM Application Partnership, FCC 89M-2036, ¶ 5 (ALJ Aug. 4, 1989) (copy attached) (ALJ denied intervention but invited petitioner to give any appropriate information to the Bureau "to use as it sees fit").

6. Finally, the affidavit provided by David L. Shepherd adds no support whatsoever to KWIX's petition. In it, Mr. Shepherd merely parrots the general, conclusory statements made in the petition, providing absolutely no specific facts concerning the promised "additional information." Nor does the affidavit provide any excuse as to why those facts are not disclosed or why they cannot easily be provided to the parties without the necessity of KWIX's intervention. There is surely no indication that Mr. Shepherd would be unwilling to surrender the information he purports to possess to assist the Commission in its determination of this case. Nor is there any indication that Mr. Shepherd would refuse to comply with the ordinary discovery process available to the parties. See 47 C.F.R. § 1.311, et seq. The affidavit, therefore, fails to establish sufficient grounds to support intervention. See Gemini Broadcasting Co., 89 FCC 2d

389, 391 (Rev. Bd. 1982) (intervention denied where petitioner failed to show that it had any special knowledge or information).

CONCLUSION

KWIX's intervention is unnecessary and without any public interest benefit. KWIX need not be a party for the purpose of providing the information that it states it is willing and prepared to provide and, indeed, would be compelled to provide in the ordinary discovery process. KWIX has not shown how it will assist in the presentation of this case to the Commission, and has failed to provide adequate information by way of affidavit as to why the addition of a third party to this action would further the public interest, rather than merely add cost, complexity and undue emphasis on KWIX's private interests in seeing the licenses of Contemporary/Lake revoked. Accordingly, KWIX's petition to intervene should be denied.

Respectfully submitted,

CONTEMPORARY MEDIA, INC.,
CONTEMPORARY BROADCASTING, INC.,
and LAKE BROADCASTING, INC.

By: 

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November 3, 1995

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 89M-2036
011224

In re Application of)	MM Docket No. 89-294
)	
CHRISTIAN FM APPLICATION PARTNERSHIP)	File No. BPH-8703130A
)	
For a Construction Permit for a New)	
FM Broadcast Station on Channel 274)	
at Marion, Kentucky)	

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1989; Released: August 4, 1989

1. Under consideration are the following: Petition for Leave to Intervene, filed July 20, 1989, by Crittenden County Broadcasting Company, Incorporated ("Crittenden"); Supplement, filed July 24, 1989, by Crittenden; Opposition, filed July 25, 1989, by Christian FM Application Partnership ("Christian"); Opposition, filed July 31, 1989, by the Mass Media Bureau; and Opposition, filed July 31, by Christian.

2. Crittenden seeks intervention pursuant to Section 1.223(b) of the Commission's Rules. Crittenden alleges that it has standing because, as the licensee of the AM station in Marion, it has an economic interest and because it is a member of the listening public in Marion. Crittenden also alleges that it is uniquely situated to assist the Commission in the determination of the specified issues.

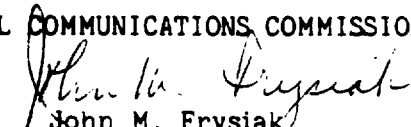
3. The petition will be denied. Crittenden has not shown that its AM station and the proposed FM broadcast station will serve the same area, compete for the same listening audience or compete for the same advertising dollars. It has fallen far short of meeting the Commission's well established economic intervention standard. In short, Crittenden has failed to show that "prospective direct economic competition" will result from this proceeding. Juarez Communications Corp., 56 RR 2d (Rev. Bd. 1984), at para. 2, citing FCC v. Sanders Brothers Radio Stations, 309 US 470 (1940).

4. Secondly, status as a member of the listening public, in and of itself, does not accord standing to intervene. A party requesting to intervene because it is a member of the viewing or listening public must demonstrate "a personal stake in the outcome" of the proceeding, and "...the injury or threat of injury must be both 'real and immediate', not 'conjectural' or 'hypothetical'." GAF Broadcasting Co., Inc., 55 RR 2d 1639 (1984), at para. 6, citing O'Shea v. Littleton, 414 US 485, 494-95 (1974). The public interest considerations Crittenden claims are at stake (Petition at paras. 11-15) are based on nothing more than conjectures and innuendos. Crittenden has not alleged any facts specifically related to Christian, its actions or character, which would impact upon the public interest.

5. Additionally, Crittenden has failed to show how its participation as a party in this proceeding will aid the Commission in determining the issues designated against Christian. The information accumulated by Crittenden's counsel involves unrelated applicants in other, unrelated proceedings, and does not pertain to Christian specifically. Crittenden does not appear to have any special knowledge about Christian that would have any bearing on its qualifications to be a Commission licensee. And if it does have specific and appropriate information, it may simply give such information to the Mass Media Bureau to use as it sees fit.

Accordingly, IT IS ORDERED that the Petition for Leave to Intervene, filed July 20, 1989, by Crittenden County Broadcasting Company, Incorporated IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Debra A. Williams, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 3rd day of November, 1995, I have caused to be mailed, or hand-delivered, a copy of the foregoing "Opposition to Petition to Intervene" to the following:

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*** BY HAND**